

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

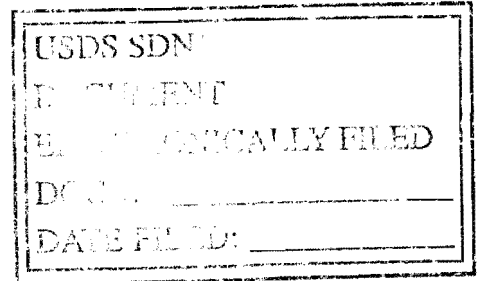
HARVEY P. FAUST, JR.,

Plaintiff,

-v-

MICHAEL J. ASTRUE, Commissioner of Social  
Security,<sup>1</sup>

Defendant.



Case No. 06-CV-4577 (KMK)(LMS)

ORDER ADOPTING  
REPORT & RECOMMENDATION

KENNETH M. KARAS, District Judge:

Harvey P. Faust, Jr. ("Plaintiff"), brings this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Commissioner of Social Security (the "Commissioner"), holding he was not entitled to disability insurance benefits under the Social Security Act. The case was referred to Magistrate Judge Lisa M. Smith pursuant to 28 U.S.C. § 636(b).<sup>2</sup> On March 14, 2011 Magistrate Judge Smith issued a Report and Recommendation ("R&R") fully setting forth the procedural background of this case, and the Court assumes the Parties' familiarity therewith. After reviewing the matter, Magistrate Judge Smith issued a thorough R&R, concluding that this Court should grant the Plaintiff's motion for remand, deny the Commissioner's cross-motion for judgment on the pleadings, and remand the matter for further administrative proceedings. The Parties were advised of their right to file objections to

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<sup>1</sup> Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant for his predecessor in office, Jo Anne B. Barnhart, who has been named as Defendant in Plaintiff's Complaint.

<sup>2</sup> The case was referred to Magistrate Judge Smith by Judge Colleen McMahon, who was initially assigned this case. The case was reassigned to this Court on August 6, 2007.

the R&R, but they filed no objections.

A district court reviewing a report and recommendation “may accept, reject or modify, in whole or in part, the findings or recommendation made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c); *see also Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-836, 2007 WL 831816, at \*1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), parties may submit objections to a magistrate judge’s report and recommendation. The objections must be “specific” and “written,” and made “within 14 days,” plus an additional three days, pursuant to Federal Rule of Civil Procedure 6(d), or a total of seventeen days, after being served with the report and recommendation. Fed. R. Civ. P. 72(b).

“[W]here a party does not submit an objection, a district court need only satisfy itself that there is no clear error on the face of the record.” *Donahue*, 2007 WL 831816, at \*1 (internal quotation marks omitted). In addition, a party’s failure to object will waive that party’s right to challenge the report and recommendation on appeal. *See FDIC v. Hillcrest Assocs.*, 66 F.3d 566, 569 (2d Cir. 1995) (“Our rule is that ‘failure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.’” (quoting *Small v. Sec’y of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989))).

Here, as noted, the Parties have not filed objections to the R&R. Accordingly, the Court has reviewed the R&R under the clear error standard. The Court finds no clear error in the R&R, and therefore adopts Magistrate Judge Smith’s R&R in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation dated March 14, 2011, is ADOPTED in its entirety. It is further

ORDERED that Plaintiff’s motion for remand is GRANTED. It is further

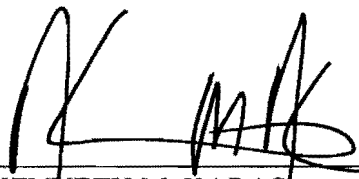
ORDERED that the Commissioner's cross-motion for judgment on the pleadings is DENIED. It is further

ORDERED that the Commissioner's decision is reversed, and the matter remanded for further administrative proceedings. It is further

ORDERED that the Clerk of the Court is respectfully directed to terminate the pending motion (Dkt. No. 9), and to close this case.

SO ORDERED.

Dated: February 6, 2012  
White Plains, New York

  
KENNETH M. KARAS  
UNITED STATES DISTRICT JUDGE

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